

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1262 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
DIST. PANCHAYAT DELETED

Versus

SHANTIBEN BHIMABHAI

-----  
Appearance:

MS SEJAL K MANDAVIA for Petitioners  
MR VA PITHIA for Respondent No. 1  
NOTICE SERVED for Respondent No. 4

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/05/2000

ORAL JUDGEMENT

#. This is an appeal against the judgment and order of the Workmen's Compensation Commissioner, Porbandar dated 15-2-1992 awarding compensation, penalty and interest against the respondents.

#. The brief facts are that Bhimabhai was serving as driver with Taluka Panchayat - appellant No.1. The respondent No.4 is the insurance company. Jeep car bearing No. GUJ 9767 was insured with the respondent No.4. The accident occurred on 2-8-1988. The deceased was driving the aforesaid vehicle owned by the opposite party No.2 before Compensation Commissioner. The accident occurred at 1.30 P.M.. The driver had sustained injuries and he died. The heirs of the deceased claimed compensation, penalty and interest etc.

#. The application for claim was contested on the ground that the compensation could be claimed from the driver and the owner of the truck and there was no liability of the opposite party No.1 to pay compensation.

#. The opposite party No.2 in the court below also denied liability to pay compensation so also the opposite party No.3.

#. The court below found that the applicants are the heirs of the deceased Bhimabhai. It further found that he died in an accident in the course of his employment with the opposite parties Nos.1 & 2. The monthly income of the deceased was held more than Rs.1,000/- per month. With these findings, the court below found that the applicants were entitled to compensation of Rs.84,760/-. The penalty and interest was also awarded by the court below. It is therefore this appeal by the District Panchayat and Taluka Panchayat - opposite party Nos.1 & 2 in the court below. No appeal has been preferred by New India Assurance Company.

#. The learned counsel for the parties have been heard. The factual aspect of the case is not in dispute before me. The accident, its manner, date, time and place has not been disputed. The learned counsel for the appellant has argued that the appeal has been filed only on two points viz. against the order imposing penalty and the order awarding interest. In the appeal, quantum of compensation has not been challenged. Consequently, the quantum of compensation assessed by the court below does not require any adjudication or interference.

#. On the point of penalty, it has been argued that the Workmen's Compensation Commissioner has not at all discussed the plea of the appellant that appointment was given to the widow of the deceased within 6 months of the accident. The accident occurred on 2-8-1988, whereas, the appointment was given to the widow of the deceased on

26th February, 1989. Since it was not discussed by the court below, the learned counsel for the appellant argued that there was no delay in payment of compensation and efforts were made bonafidely to provide monetary help to the widow of the deceased and other heirs of the deceased by giving appointment to the widow. For appreciating this contention, the provisions of Section 4-A (3) of the Workmen's Compensation Act have to be kept in mind. It reads as under :-

"Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that in addition to the amount of the arrears, simple interest at the rate of six percent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty percent of such amount, shall be recovered from the employer by way of penalty."

#. It is thus clear from the above provisions that if the employer is in default in paying compensation due under the Act within one month from the date it fell due and if the Commissioner feels that there is no justification in the delay in payment of compensation, penalty not exceeding 50 % of such amount viz. the amount of compensation can be awarded against the employer. Obviously, the compensation becomes payable on the date of accident and not on the date of determination of amount of compensation by the Commissioner. Since the accident took place on 2-8-1988 and the compensation was not paid within one month thereof, it can be safely held that the compensation was not paid within one month from the date it fell due. Default in payment of compensation is not in dispute. However, the contention is that within six months, employment was given to the widow of the deceased and in that view of the matter, it cannot be said that there was any delay in paying compensation. Learned counsel for the appellant was asked to cite any authority in support of her contention but she could not produce any such authority that giving appointment to the widow of the deceased would mitigate rigor of payment of compensation. The compensation cannot be equated with the appointment to the widow or to any other heir of the deceased. Consequently, this cannot be said to be ground for not imposing penalty by the Workmen's Compensation Commissioner.

#. Learned Counsel for the appellant has cited the case

of KOLI MANSUKH RAN V. PATEL NATHA RAMJI 1992 ACJ 772. In this case facts were that the workman was employed by contractor for the work of principal's business. He sustained injuries. Claim for compensation was made against the principal. Bonafide belief of the principal about his non liability in the peculiar circumstances of the case and no wilful default or unjustifiable delay in making payment of compensation was accepted. The principal extended his full cooperation to the unfortunate victim of the employment injury so as to secure speedy medical treatment and also took the injured to the hospital, paid taxi charges and medical expenses. On these facts, it was held that it was fit case for awarding penalty and interest. This case is obviously distinguishable. In the instant case, except for providing appointment to the widow of the deceased within one month, nothing was done nor employer was under bonafide belief that it was not responsible or liable to pay compensation. Consequently, on the strength of this case, it cannot be held that giving of appointment to the widow of the deceased reflects bonafide on grounds of which, it can be said that there was no delay or default in payment of compensation. Delay or default in payment of compensation is established. Consequently, penalty could be imposed.

##. The fact that allegation of giving appointment to the widow of the deceased was not considered by the Workman's Compensation Commissioner will not render the judgment nullity or bad in the eyes of law.

##. Learned counsel for the respondent however contended that penalty should be enhanced to 50 % of compensation. This contention cannot be accepted because no cross objection has been filed by him. Section 4-A(3) of the Workmen's Compensation Act confers a discretion upon the Commissioner to award penalty not exceeding 50 % of the arrears viz. compensation. If discretion has been given to the Workmen's Compensation Commissioner and it was exercised by awarding penalty for a sum of Rs.25,414/-, it cannot be said that the discretion was arbitrarily exercised. Consequently, there is no occasion either on the facts or in law to enhance the amount of penalty awarded by the Commissioner.

##. So far as the interest is concerned, the learned counsel for the appellant contended that since intimation of death was given to the insurance company - respondent No.4 on the next day of the accident, hence, this liability is to be fastened against the insurance company and not against the employer.

##. In support of her contention, the learned counsel for the appellant has cited a decision of this Court in SHANTABEN PANNDURANG JADAV V. MANUBHAI CHHAGANBHAI PATEL 1999 LAB.I.C. 541. It was exparte judgment rendered by this Court. The appeal was not opposed by the respondents. It was observed that the Commissioner found that interest could not be awarded for the reasons that the employer has not given information regarding the accident to the insurance company. This court found that even if it is taken to be correct then the insurance company had notice of the claim application and it is understandable that it could have immediately thereafter deposited amount of compensation but that has not been done. On this ground, insurance company could not be relieved of its liability to pay the amount of compensation.

##. Section 4-A (3) of the Workmen's Compensation Act clearly provides that in case of default of payment of compensation within one month from the date it fell due, the Commissioner may direct that in addition to the amount of arrears which means compensation, simple interest at the rate of 6 % on the amount due together with penalty not exceeding 50 % of such amount shall be recovered from the employer by way of penalty. This Section therefore does not exonerate the employer from liability to pay interest on the ground that the information of accident was given to the insurance company.

##. In case of JAYANTILAL & CO. RAJKOT VS. GARASAI RAJVIRBA UDESINH & ORS. 1991 II CLR 424, this Court has taken the view that the provisions for payment of interest and penalty have been enacted with a view to deter the employer from taking facile pleas and unreasonable defence for avoiding payment of compensation. The insurer cannot be directed to indemnify the insured for payment of interest and penalty. Reference was also made in this case to Division Bench pronouncement in GAUTAM TRANSPORT BHAVNAGAR V. JILUBEN HUSEINBHAI & ORS 1989 ACJ 587. It was further observed in this case that penalty under Section 4-A(3) of the Act is imposed on the owner of the offending truck for remaining indifferent to his statutory liability to make payment in time. If by his gross negligence the insured or the owner invites or incurs additional liability or responsibility for having violated the statutory requirement, then the Insurance Company cannot be directed to indemnify the insured on that count.

##. In view of the above discussions, I do not find force in the contention of the learned counsel for the appellant that simply because information of the accident was given on the next day to the Insurance Company, liability to pay penalty and interest stood transferred to the Insurance Company. On the other hand, Insurance Company cannot be directed to pay penalty and interest.

##. The Commissioner in his judgment has awarded compensation against three opposite parties individually as well as jointly. Penalty was awarded against Opposite Party Nos.1 & 2 but not against the Insurance Company. Interest was awarded against Opposite Party Nos.1 & 2. As such, there is no merit in this appeal nor there is any ground for interference in the judgment under appeal. The appeal therefore fails and is dismissed with no order as to costs.

Date : 9-5-2000 [ D.C.Srivastava, J. ]

#kailash#